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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAE KYUNG LEE
and MYOUNG HWA KO

Appeal 2008-2220
Application 09/840,881
Technology Center 2600

Decided: September 15, 2008

Before MAHSHID D. SAADAT, JOHN A. JEFFERY,
and MARC S. HOFF, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1-10, 12, 13, 15-18, and 20-26, which are all of the claims pending in this application as claims 11, 14, and 19 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Appellants have invented a TV control method capable of displaying function description and feature information of a TV in accordance with a request of a user (Spec. 5). According to Appellants, a storage unit stores the proper information of a product and contact information of a certain site which is used for displaying function information and feature information of the product using such information (*id.*).

Claim 1 is representative of the claims on appeal and reads as follows:

1. In an apparatus reproducing video and audio signals by receiving a broadcast signal, a TV, comprising:

a storing unit for storing proper information of the TV and contact information of an Internet site; and

a controlling unit to access information from the Internet site using the stored proper information of the TV in response to a user pressing a function selection key, the proper information of the TV and the contact information having been stored in the storing unit prior to the user pressing the function selection key, the controlling unit further displaying function information and feature information of the TV on a screen by using the stored contact information and the stored proper information.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Sturgeon	US 6,202,212 B1	Mar. 13, 2001
Wright	US 2004/0024657 A1	Feb. 5, 2004 (effectively filed Mar. 20, 2000)

Claims 1-10, 12, 13, 15-18, and 20-26 stand rejection under 35 U.S.C. § 103(a) based upon the teachings of Sturgeon in view of Wright.

Rather than reiterate the opposing arguments, reference is made to the Briefs¹ and the Answer² for the respective positions of Appellants and the Examiner. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants did not make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUE

The issue is whether 35 U.S.C § 103(a), the ordinarily skilled artisan would have found it obvious to combine Sturgeon with Wright to render the claimed invention unpatentable.

FINDINGS OF FACT

The following findings of fact (FF) are relevant to the issue involved in the appeal.

Sturgeon

1. Sturgeon relates to an appliance modal change based on a user's actuation which is indicative of a change using a mouse button, a keyboard, or a remote control. (Col. 2, ll. 38-45).

2. Figure 2 of Sturgeon illustrates a block diagram of a computer base unit including a video card, which is part of a home theatre system shown in Figures 1A and 1B. (Col. 4, ll. 47-48).

¹ Appeal Brief was filed May 24, 2007 and Reply Brief was filed October 9, 2007.

² Answer was filed August 8, 2007.

3. The home theatre system is also connected to the Internet through a local Internet service provider (ISP) via a wide area network. (Col. 5, ll. 49-67).

4. Data is located and exchanged between computer systems connected to the Internet. (Col. 6, ll. 1-25).

5. As shown in Figure 15 of Sturgeon, the home theatre system displays a main menu including a plurality of buttons such as “Watch TV” and “Guide” buttons (col. 11, ll. 38-46) from which the user can select a specific mode by pointing to a particular button and select it using the trigger on the back of the remote control. (Col. 11, ll. 60-66).

6. The user’s actuation indicative a modal change is selected from a main menu which includes a “Help” function and “[c]alls up the PC Theatre Online User’s Guide, which provides the user with help using the system.” (Col. 12, ll. 10-13).

Wright

7. Wright provides product information in the form of an indicator that directs the customer to a web page for the product information. The indicator may be an URL to a web page and be stored in a memory. (Abstract).

8. Wright discloses that a processor accesses the memory, where the indicator is stored, and through an internet interface obtains the information from the web page accessed using the indicator and presents the information on a display to a user. (¶ [0025]).

9. Wright further provides examples of the information included in the indicator as product name, serial number, company, patent number, copyright, etc. (¶¶ [0022] - [0023]).

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). “[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

In identifying a reason that would have prompted a person of ordinary skill in the relevant field to combine the prior art teachings, the Examiner must show some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR Int’l. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007). “[T]here must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (citing *In re Lee*, 277 F.3d 1338, 1343-46 (Fed. Cir. 2002); *In re Rouffet*, 149 F.3d 1350, 1355-59 (Fed. Cir. 1998)).

Further, a rejection based on section 103 must rest upon a factual basis rather than conjecture, or speculation. “Where the legal conclusion [of obviousness] is not supported by the facts it cannot stand.” *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967). *See also In re Kahn*, 441 F.3d at 988 (Fed. Cir. 2006).

ANALYSIS

Claim 1

Appellants argue that Sturgeon discloses the ability to switch modes of a display unit and not to access information from an Internet site using the stored proper information of the TV in response to a user pressing a function selection key, as recited in claim 1 (App. Br. 7-8). Appellants assert that Sturgeon, at best, “merely discloses a Help function that may be accessed via a mouse to obtain a PC Theatre’s User Guide” (App. Br. 8). The Examiner argues that the TV system of Sturgeon accesses the Internet to provide a “‘TV’ online user guide in response to a user selecting to access that function” (Ans. 13). With respect to the claimed details of such user guide and processing the accessed information by an Internet enabled device, the Examiner relies on the teachings of Wright which provides for storing the product information (*id.*).

We agree with the Examiner’s characterization of the “PC Theatre Online User’s Guide” of Sturgeon as the claimed “proper information” and the “contact information” that are stored and used to display function information. Sturgeon provides for accessing information from an Internet site (FF 1-4) using the stored proper information in the form of a user’s guide (FF 6) in response to a user pressing a function selection key in the form of the trigger button on the remote control (FF 5). The function information and feature information of the TV is then displayed or “called up” using the stored information (FF 5-6). Therefore, as shown in Figure 15 of Sturgeon, the function information and feature information are indeed included in the *online guide*, which in turn, includes the system information obtained from an Internet site.

We further agree with the Examiner's rationale for combining Sturgeon with Wright to further improve the display and presentation of the obtained information in the system disclosed in Sturgeon. Contrary to Appellants' assertion related to the user's guide being provided for help using the system instead of accessing/displaying a TV online user guide (Reply Br. 3), as discussed above, Sturgeon obtains the information on how to use the system, which includes a TV. Wright teaches the details of storing product information through an indicator that provides access to the information related to that product (FF 7-8). Therefore, no matter what other components are included in the system of Sturgeon, using the standard expressed in *KSR*, applying the teachings of Wright would have improved the way the information is accessed and stored in the system of Sturgeon and would have produced only predictable results.

Thus, based on our analysis above and to the extent claimed, we find that one of ordinary skill in the art would have found the Examiner's reliance on the combination of Sturgeon and Wright to be reasonable in rendering the subject matter of claim 1 obvious. Therefore, the 35 U.S.C. § 103 rejection of claim 1 is sustained.

Claims 2 and 3

Appellants' arguments (App. Br. 9-10) reiterate the contention that the combination of Sturgeon and Wright does not teach or suggest the recited features, which arguments we found to be unpersuasive, as discussed *supra*. Additionally, Appellants assert that the Internet site disclosed in Wright provides no correlation between the proper information of a TV and a product-related site (*id.*)

We disagree and find the Examiner's position that the product-related site is disclosed in Wright (Ans. 15) to be reasonable since Wright correlates the product information with the indicator set by the user (FF 7). Therefore, for the reasons discussed above, we sustain the 35 U.S.C. § 103 rejection of claim 2, as well as claim 3 which is not discussed with any specificity (App. Br. 10), over Sturgeon and Wright.

Claims 6, 10, 13, and 15, 20, 21, and 24-26

Regarding claim 6, Appellants argue that Wright accesses a website based on a URL instead of accessing the information using a model name or number of the TV (App. Br. 13). Appellants make similar arguments with respect to claims 7-10, 13, and 15 (App. Br. 15-18), 20, 21, and 24-26 (App. Br. 20-24). We agree with the Examiner (Ans. 16-17) that Wright discloses the indicator to be an URL wherein the information contained in the indicator and on the website may be a model or serial number of the product (FF 9).

Similarly, we find the Examiner's position with respect to the teachings of Sturgeon and Wright related to the indicator being an URL and the video or audio functions of the TV included in the home theatre system (Ans. 16-18) to be reasonable and based on the factual findings discussed above. Therefore, we also sustain the 35 U.S.C. § 103 rejection of claims 6-10, 13, and 15, 20, 21, and 24-26 over Sturgeon and Wright.

Claims 4, 5, 12, and 23

Appellants argue that Wright, while providing an interface for automatically interfacing to the Internet, does not suggest doing so in response to the pressing of a function selection key, as recited in claim 4 (App. Br. 11). Appellants make similar arguments regarding claims 5, 12,

and 23 (App. Br. 12, 16-17, and 22). In response, the Examiner points to Sturgeon's network interface and access to the online user's guide (Ans. 15) and argues that selecting the user's guide and retrieving the product information is in response to "pressing a function selection key" on the remote control (Ans. 16). We agree and find that sufficient teachings in Sturgeon and Wright suggest retrieving the information in response to the key selection by the user (FF 5-7). Therefore, we sustain the 35 U.S.C. § 103 rejection of claims 4, 5, 12 and 23 over Sturgeon and Wright.

Claims 16-18

With respect to claim 16, Appellants argue that transmission of stored proper information is not disclosed by Sturgeon (App. Br. 18-19). Appellants further assert that the applied references do not teach or suggest the limitations of claims 17 and 18 with respect to receiving and processing a broadcast signal or a homepage when the proper information is not transmitted to the product-related site (App. Br. 19).

Based on a review of the prior art, we find the Examiner's position (Ans. 8-9) with respect to the teachings of Sturgeon and Wright related to transmission of the proper information as well as the display of broadcast signal or a home page to be reasonable (FF 4-6). For similar reasons discussed above and in view of Appellants' failure to rebut the Examiner's prima facie case of obviousness with sufficient specificity, we do not find error in the Examiner's position and sustain the 35 U.S.C. § 103 rejection of claims 16-18 over Sturgeon and Wright.

CONCLUSION

On the record before us, Appellants have failed to show that the Examiner has erred in rejecting the claims. Accordingly, based on the teachings of the prior art outlined and discussed *supra*, we agree with the Examiner's position and sustain the 35 U.S.C. § 103(a) rejection of claims 1-10, 12, 13, 15-18, and 20-26 over Sturgeon and Wright.

DECISION

The decision of the Examiner rejecting claims 1-10, 12, 13, 15-18, and 20-26 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

KIS

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